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(2007) 03 BOM CK 0028

In the Bombay High Court

Case No : Civil Rev. Application No. 1107 of 2002

Vitthal Talegave and Others — APPELLANT

Vs

State of Maharashtra and Others — RESPONDENT

Date of Decision : 01-03-2007

Acts Referred:
Land Acquisition Act, 1894 — Section 12, 12(2), 18, 18(2), 3

Citation : (2008) 1 ALLMR 114 : (2007) 6 MhLj 47

Hon'ble Judges : P.V. Kakade, J

Bench : Single Bench

Advocate : P.G. Godhamgaonkar, for the Appellant; B.R. Khekale, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

P.V. Kakade, J.—Heard learned Counsel for the petitioner as well as learned A.G.P. This is an application challenging the order passed by S.L.A.O., dated 29-9-1995 rejecting the claimant''s application for condonation of delay and thereby rejecting reference filed u/s 18 of the Land Acquisition Act, consequent upon the award passed under the provisions of the Land Acquisition Act. The award came to be passed and declared on 24-2-1995 in respect of agricultural land bearing Field Survey No. 107 admeasuring 83 R for the purpose of submerging area of Manar Project. The notice as required u/s 12(2) of the Land Acquisition Act was issued by the S.L.A.O. to the claimant/land holder which is, according to S.L.A.O., served upon the landholder on 25-3-2005. The reference was rejected on the ground that the provisions of section 18 of the Land Acquisition Act require that whoever is aggrieved by award made in respect of acquisition of land under Land Acquisition proceedings, should present his reference petition before the Collector within six weeks from the date of receipt of notice u/s 12(2) of the said Act. However, in the case of petitioner, according to the S.L.A.O, notice was served upon and received by the landholder on 25-3-1995. According to the report of Tahsildar, Kandhar, who has also made

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panchnama, which reflected that the notice contemplated u/s 12(2) was served upon the landholder on 25-3-1995. Therefore, according to the S.L.A.O. claimant was required to present his claim before 5-5-1995 but he has not done so and has presented his claim on 29-5-1995 and therefore time barred and hence the application came to be rejected.

2. The petitioner has come with the case that though the panchnama was conducted in village by the Tahsildar on 25-3-1995, the applicants being agriculturists and illiterate persons, did nothing during the period of preparation of filing reference u/s 18 of the said Act, as they were under wrong impression that the reference is required to be filed within period of six months from the date of service of notice u/s 12(2) of the Land Acquisition Act. Therefore, the applicants were not present or represented at the time of passing award in land acquisition proceedings and therefore sought condonation of delay in filing reference u/s 3 of the Land Acquisition Act.

3. It appears that in the application of condonation of delay, the applicant stated that the panchnama was made on 25-3-1995 but the petitioner was not aware of the period within which the reference was to be filed and this aspect is construed as an admission on the part of the applicant by the learned S.L.A.O. while passing order rejecting the application.

4. In this regard, the learned Counsel for the petitioner sought to put reliance on the ruling of Apex Court in the case of Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, , wherein the Court observed that "where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned. So the knowledge of the party affected by the award made by the Collector u/s 12 of the Land Acquisition Act, 1894, either actual or constructive is an essential requirement of fairplay and natural justice. Therefore, the expression "the date of the award" used in proviso (b) to Section 18(2) of the Act must mean the date when the award is either communicated to the party or is known by him either actually or constructively. It will be unreasonable to construe the words from the date of the Collector''s award used in the proviso to section 18 in a literal or mechanical way." Therefore, if this ratio is relied upon, then factual matrix involved in this petition makes it clear that there cannot be said to be actual or constructive communication of the order to the applicant concerned and therefore his valuable right to file reference u/s 18 of the said Act, cannot be taken away only taking hypertechnical view by mechanical application of the said provision.

5. Therefore, I am of the view that the order passed by the S.L.A.O. appears to be erroneous and has to be set aside. In the result, the civil revision application is allowed in terms of prayer clause-b and c and disposed of, with no order as to costs.

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